

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Noah Kim	Team: Squad #8	CCRB Case #: 201905253	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 06/04/2019 11:43 PM	Location of Incident: 847 Flatbush Avenue	Precinct: 70	18 Mo. SOL 12/4/2020	EO SOL 7/21/2021	
Date/Time CV Reported Tue, 06/04/2019 11:43 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 06/17/2019 10:53 AM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. SGT John Henderson	151	925622	070 PCT
2. POM Jason Barish	30344	950047	070 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POF Elisa Battista	00178	959481	070 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT John Henderson	Abuse: Sergeant John Henderson stopped § 87(2)(b) and § 87(2)(b)	[REDACTED]
B.POM Jason Barish	Abuse: Police Officer Jason Barish threatened to arrest § 87(2)(b)	[REDACTED]
C.POM Jason Barish	Abuse: Police Officer Jason Barish threatened to seize § 87(2)(b)'s property.	[REDACTED]

### Case Summary

On June 4, 2019, § 87(2)(b) filed this complaint with IAB via phone. On June 17, 2019, the CCRB received the following complaint from IAB via original log number 19-21885 [BR22].

On June 4, 2019, at approximately 11:43 p.m., in the vicinity of 847 Flatbush Avenue in Brooklyn, § 87(2)(b) was sitting in the driver's seat of his parked vehicle next to his friend, § 87(2)(b). Sergeant John Henderson, Police Officer Jason Barish, and Police Officer Elisa Battista, all of the 70<sup>th</sup> Precinct, approached his vehicle. PO Battista approached the front driver's side of the vehicle, informed § 87(2)(b) that the officers had pulled him over for failing to signal into a parking space, and requested his license (**Allegation A: Abuse of Authority**; § 87(2)(g) § 87(2)(b) refused to roll down his window and provide his license, stating that he was parked. PO Barish, who stood by the front passenger's door of the vehicle, informed § 87(2)(b) that if he prevented the officers from doing their job, he would go to jail for obstruction (**Allegation B: Abuse of Authority**; § 87(2)(g) § 87(2)(b) PO Barish further stated that if § 87(2)(b) did not cooperate, the officers would tow his vehicle with him inside of it (**Allegation C: Abuse of Authority**; § 87(2)(g) § 87(2)(b). After a couple of minutes, § 87(2)(b) § 87(2)(b) complied with the officers' requests, rolled down his window, and presented his license. He was then released after being warned and admonished. § 87(2)(b) § 87(2)(b) was not arrested or issued a summons as a result of this incident.

Body-worn camera footage (BWC) from several responding officers was obtained for this incident [BR01 through BR07].

### Findings and Recommendations

**Allegation (A) Abuse of Authority: Sergeant John Henderson stopped § 87(2)(b) and § 87(2)(b)**

§ 87(2)(g)

None of the officers' body-worn camera footage captured whether § 87(2)(b) and § 87(2)(b) were stopped while already parked, or if they committed a traffic infraction and were pulled over for failing to use a turn signal [BR01 through BR07].

Body-worn camera footage from PO Battista shows PO Battista approach the front driver's window of § 87(2)(b)'s vehicle. At 1:15 minutes PO Battista informs § 87(2)(b) that he is being stopped because he did not signal when going into the parking space. § 87(2)(b) replies that he is parked [BR03]. Body-worn camera footage from PO Barish and Sgt. Henderson captures the same events as the body-worn camera footage of PO Battista [BR02 and BR04].

On June 4, 2019, at approximately 11:47 p.m., § 87(2)(b) testified that he and § 87(2)(b) were stopped by PO Barish, PO Battista, and Sgt. Henderson. § 87(2)(b) testified that he had been sitting in the front driver's seat of his parked car which had been turned off for five to ten minutes when the three officers, dressed in plain clothes, approached § 87(2)(b)'s vehicle. PO Battista came to § 87(2)(b)'s window at the front driver's seat of the vehicle and requested that he roll his window down so she could speak with him. § 87(2)(b) asked why he was being stopped and PO Battista told him that he had not signaled when pulling into the parking spot he was in. § 87(2)(b) asked how the officers could have seen him fail to signal if he had been parked in the space for a few minutes. § 87(2)(b) testified that he signaled into the parking space [BR08]. Despite the investigation's efforts, a statement from § 87(2)(b) could not be obtained. § 87(2)(b) § 87(2)(b) missed two scheduled interviews at the CCRB.

Sgt. Henderson did not recall which officer was driving the vehicle, however either PO

Battista or PO Barish signaled that a vehicle in front of them, occupied by § 87(2)(b) and § 87(2)(b) had committed a traffic infraction involving their turn signal. One of the two officers turned on the lights and sirens and pulled the vehicle over. The three officers approached the vehicle and took turns asking § 87(2)(b) for his license and registration, however § 87(2)(b) kept his window rolled up and refused to initially provide his documentation. [BR10].

PO Battista testified that she was driving an unmarked police vehicle accompanied by PO Barish and Sgt. Henderson on Flatbush Avenue in Brooklyn. PO Battista noticed a vehicle driving westbound on Church Avenue which failed to signal when turning right to go northbound on Flatbush Avenue. As a result of the traffic infraction, either PO Battista or PO Barish decided to stop the vehicle. § 87(2)(b) pulled over into a parking spot on Flatbush Avenue and PO Battista pulled over behind him. PO Battista approached the front driver's window of § 87(2)(b)'s vehicle and informed § 87(2)(b) that she stopped him because he failed to signal while turning. She requested § 87(2)(b)'s license, registration, and insurance. § 87(2)(b) refused to provide these items and replied that he was parked. [BR09].

PO Barish testified that she informed PO Barish and Sgt. Henderson that she had witnessed a traffic infraction and put on the lights and sirens in order to pull over the vehicle that committed the infraction. PO Barish did not personally observe the traffic infraction. The vehicle, occupied by § 87(2)(b) and § 87(2)(b) pulled over into a parking space and PO Battista pulled over behind it [BR11].

§ 87(2)(g)

**Allegation (B) Abuse of Authority: Police Officer Jason Barish threatened to arrest § 87(2)(b)**

It is undisputed that PO Barish threatened to arrest § 87(2)(b) if he continued to obstruct the officers from doing their job by failing to provide them with his documentation.

§ 87(2)(b) testified that he refused to roll down his window and provide his license to PO Battista three to four times. After repeatedly refusing, PO Barish, who was standing by the front passenger's side of the vehicle, told § 87(2)(b) that "You can get arrested, it's up to you, however you want to do this." PO Barish did not inform him what he could have been arrested for [BR08].

PO Barish testified that when the officers approached § 87(2)(b)'s vehicle, § 87(2)(b) kept his windows rolled up for 10-15 minutes. PO Barish was standing on the front passenger's side of the vehicle. PO Barish told § 87(2)(b) through the rolled-up window that the officers explained why they had stopped him, and if he prevented the officers from doing their job, § 87(2)(b) would go to jail for obstruction [BR11]. PO Battista and Sgt. Henderson did not recall PO Barish making this statement [BR09 and BR10].

Body-worn camera footage from PO Barish shows PO Barish approach the passenger side of § 87(2)(b)'s vehicle. Between 1:20 and 2:50 minutes, PO Barish, PO Battista, and Sgt Henderson repeatedly ask § 87(2)(b) for his license. § 87(2)(b) keeps his windows rolled up and refuses to provide his license. At 03:45 minutes, PO Barish tells § 87(2)(b) "We explained why we stopped you, we are police officers, we are recording. If you prevent us from doing our job, you go to jail for obstruction, you understand that right?" [BR02]. Body-worn camera footage from PO Battista and Sgt. Henderson captures the same events as the body-worn camera footage of PO Barish [BR03 and BR04].

According to NY CLS Penal § 195.05, a person is guilty of obstructing governmental administration when he intentionally obstructs, impairs, or perverts the administration of law or other governmental function or attempts to prevent a public servant from performing an official

function [BR12].

§ 87(2)(g)

**Allegation (C) Abuse of Authority: Police Officer Jason Barish threatened to seize § 87(2)(b)'s property.**

It is undisputed that PO Barish threatened to tow § 87(2)(b)'s vehicle if he did not provide his documentation.

§ 87(2)(b) testified that PO Battista, who was standing by the front driver's side window of § 87(2)(b)'s vehicle, asked § 87(2)(b) to roll down his window and provide his license three to four times. § 87(2)(b) repeatedly refused. PO Barish, who was standing by the front passenger's side of the vehicle became annoyed and told § 87(2)(b) that the officers could tow his vehicle with § 87(2)(b) inside of it. § 87(2)(b) asked PO Barish what his car could be towed for. PO Barish did not provide an answer. After a couple of minutes, § 87(2)(b) rolled down his window and provided his license. § 87(2)(b) was released with a warning and his vehicle was not ultimately towed [BR08].

PO Barish testified that he told § 87(2)(b) that he could tow § 87(2)(b)'s vehicle with him inside of it if he did not cooperate. He made this statement to get § 87(2)(b) to provide his license and deescalate the situation. PO Barish did not know if he would have been allowed to tow the vehicle with § 87(2)(b) inside of it [BR11].

Sgt. Henderson testified that PO Barish asked him if they could tow § 87(2)(b)'s vehicle with him inside of it. Sgt. Henderson replied that they could, but it would be too big of a hassle to do so. Sgt. Henderson stated that they could have towed § 87(2)(b)'s vehicle because of the inability to see inside the vehicle. He furthered that § 87(2)(b)'s refusal to comply with their requests was a danger to the officers' security [BR10]. PO Battista did not recall PO Barish informing § 87(2)(b) that they would tow his vehicle with § 87(2)(b) inside of it if he did not cooperate and open his window [BR09].

Body-worn camera footage from PO Barish depicts PO Barish threatening to seize § 87(2)(b)'s property. At 7:08 minutes, PO Barish asks Sgt. Henderson if they can tow § 87(2)(b)'s vehicle with him inside of it. Sgt. Henderson replies that they can if they want to. At 7:18 minutes, PO Barish tells § 87(2)(b) to open the windows, or they will tow the vehicle. PO Barish furthers that they can tow the vehicle with § 87(2)(b) inside of it and that it is not unsafe to do so [BR02]. Body-worn camera footage from PO Battista and Sgt. Henderson captures the same events as the body-worn camera footage of PO Barish [BR03 and BR04].

Patrol Guide procedure 208-26 states that a vehicle may be seized during the course of an arrest if the vehicle was used as the proceeds of a crime, or as a means of furthering a crime, or to transport or conceal illegal substances, or if it was unlawfully obtained [BR13].

Patrol Guide procedure 208-02 states that in order to effect an arrest, an officer must handcuff prisoner with their hands behind their back, remove the prisoner to the precinct of arrest or designated arrest facility and inform the desk officer of the charge(s) [BR14].

Patrol Guide procedure 221-02 states that officers should utilize de-escalation techniques when consistent with personal safety which may reduce the need to use force and increase the likelihood of gaining the subject's voluntary compliance [BR23].

People v. Alston, 9 Misc. 3d 1046 states that a motorist's failure to provide license, registration, or insurance "shall be presumptive evidence that such a person was operating the

vehicle” without the required document(s) and would justify the arrest of the motorist [BR24].

§ 87(2)(g)

#### **Civilian and Officer CCRB Histories**

- This is the fifth complaint that § 87(2)(b) has been party to. Throughout these five complaints, 17 allegations have been made [BR15].
- This is the first complaint that § 87(2)(b) has been party to [BR16].
- PO Barish has been a member of § 87(2)(b) for eight years. In that time, he has been the subject of 17 allegations in nine cases, one of which was substantiated. § 87(2)(g)
- CCRB 201504513 contained an allegation of abuse of authority: improperly issuance of a summons, which was substantiated and resulted in Command Discipline A [BR17].
- PO Battista has been a member of § 87(2)(b) for four years. In that time, she has been the subject of five allegations in two cases, none of which were substantiated. § 87(2)(g)
- Sgt. Henderson has been a member of § 87(2)(b) for 19 years. In that time, he has been the subject of four allegations in two cases, none of which were substantiated. § 87(2)(g)

#### **Mediation, Civil and Criminal Histories**

- § 87(2)(b) declined to mediate this complaint [BR08].
- According to the New York City Office of the Comptroller, § 87(2)(b) has not filed a Notice of Claim regarding this incident as of November 22, 2019 [BR18].
- A FOIL request was sent to the New York City Office of the Comptroller for § 87(2)(b) regarding the incident on June 4, 2019 is pending [BR19].
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]  
[§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

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Squad No.: \_\_\_\_\_

Investigator: \_\_\_\_\_  
Signature Print Title & Name Date

Squad Leader: \_\_\_\_\_  
Signature Print Title & Name Date

Reviewer: \_\_\_\_\_  
Signature Print Title & Name Date